

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 225C.6, the Department of Human Services hereby amends Chapter 25, “Disability Services Management,” Iowa Administrative Code.

These amendments establish the process by which the Department of Human Services will approve licensing applications to the Department of Inspections and Appeals (DIA) for subacute mental health care facilities. These amendments also establish the process to determine the disbursement of 75 beds to the most qualified providers.

Iowa Code chapter 135G establishes the law for subacute care facilities. DIA is responsible for licensing subacute care facilities, and the Department must approve a licensing application based on the established process, which must identify the most qualified providers and geographically disburse no more than 75 beds.

Subacute services are one of the additional core services to be provided by Mental Health and Disability Services (MHDS) regions when public funds become available. Some MHDS regions and providers are interested in developing subacute services provided in a subacute care facility. These amendments will provide another option to provide short-term, intensive mental health services to the citizens of Iowa.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2550C** on May 25, 2016. The Department received three comments from one respondent on the proposed rules. The comments and corresponding response from the Department are as follows:

Comments:

1. The respondent stated that under the type of license contemplated by the rules, facilities would be required to take individuals who have set fires, have assaulted other patients, and/or are sexual predators, and that there has yet to be a change in the rules regarding how facilities are to handle individuals with these types of known behaviors.

2. The respondent also stated that with the move towards PRN medications, the respondent’s facilities would most likely need to have a psychiatrist in the building at all times or at a minimum have a psychiatrist available on call 24 hours per day, seven days per week.

3. Finally, the respondent stated that there is significant expense and exposure to liability for any facility that handles these individuals. There has been no discussion on increased reimbursement rates for facilities that choose to participate.

Department Response: The questions posed by the respondent are not applicable to these amendments. The DIA is responsible for setting standards and licensing subacute care facilities. There were no changes made to the rules due to the comments submitted by the respondent.

These amendments are identical to those published under Notice of Intended Action.

The Mental Health and Disability Services Commission adopted these amendments on July 6, 2016.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, it has been determined that there may be a need for more mental health professionals and other qualified staff to support licensed subacute care facilities.

These amendments are intended to implement Iowa Code section 135G.6.

These amendments will become effective September 7, 2016.

The following amendments are adopted.

ITEM 1. Reserve rules **441—25.108** to **441—25.116**.

ITEM 2. Adopt the following **new** 441—Chapter 25, division title, as follows:

DIVISION XI

PROCESS FOR APPROVING SUBACUTE MENTAL HEALTH CARE FACILITY LICENSING APPLICATIONS TO THE DEPARTMENT OF INSPECTIONS AND APPEALS

ITEM 3. Adopt the following new 441—Chapter 25, Division XI, preamble:

PREAMBLE

This division establishes the process that the department of human services will use in approving licensing applications to the department of inspections and appeals for subacute care facilities as defined in Iowa Code chapter 135G and 481—Chapter 71.

ITEM 4. Adopt the following new rules 441—25.117(135G) and 441—25.118(135G):

441—25.117(135G) Definitions.

“*Department*” means the department of human services.

“*Governing board*” means the board that directs the operations of the mental health and disability services region.

“*Mental health and disability services region*” means counties that have formed through an agreement to administer the mental health and disability services for its member counties.

“*Subacute care facility*” means the same as defined in Iowa Code chapter 135G.

441—25.118(135G) Approval process for subacute care facility applications to be licensed by the department of inspections and appeals. The department will use the following process for approving licensing applications to the department of inspections and appeals for subacute care facilities described in 481—Chapter 71.

25.118(1) Applications for licensure of subacute care facilities must be submitted to the department of inspections and appeals in the form and manner established by the department of inspections and appeals in 481—Chapter 71.

25.118(2) The department of inspections and appeals may review the application and ascertain whether or not the applicant’s facility and staff are adequate to provide the care and services required of a subacute care facility.

25.118(3) The department of inspections and appeals shall provide to the department:

- a. The completed licensure application;
- b. The date and time the department of inspections and appeals received the completed application;
- c. The number of beds proposed by the applicant for the subacute care facility; and
- d. The results of any review the department of inspections and appeals made of the adequacy of the applicant’s facilities and staff.

25.118(4) The department will review subacute care facility applications as follows:

- a. Applications will be reviewed and acted upon in the order the completed application is received by the department of inspections and appeals.
- b. The department will review and act on applications until the department has approved applications for 75 subacute care facility beds.
- c. The department will review additional applications for a number of beds above that specified in paragraph 25.118(4) “b” if the department of inspections and appeals denies or revokes a license to any subacute care facility approved by the department such that the number of publicly funded subacute care facility beds is less than 75.
- d. The department will not review applications for subacute care facilities that will not access public funding.

25.118(5) The department will determine that the application for a subacute care facility is geographically dispersed from other subacute care facilities and provide notice to the mental health and disability services regions as follows:

- a. Geographic dispersion of subacute care facility beds.

(1) The department will allocate a share of the statewide total of 75 subacute care facility beds to each mental health and disability services region by dividing the number of residents of the mental health and disability services region’s member county or counties by the total state population using the most recent available federal estimate of Iowa population multiplied by 75.

(2) The department will take under consideration the number of beds identified in the application and the number of beds allocated to mental health and disability services regions to ensure that the subacute care facility is geographically dispersed.

b. The department will notify the mental health and disability services regional chief executive officer when the department receives an application for subacute care facility licensure within 60 miles of one of the mental health and disability services region's member counties. The notice will include:

- (1) The name of the facility;
- (2) The location of the facility;
- (3) The department of inspections and appeals' facility application;
- (4) The number of beds requested in the facility application; and
- (5) The names of all mental health and disability services regions notified.

c. The governing boards of the mental health and disability services regions notified by the department may provide comment in writing to the department on the subacute care facility application. A governing board may comment on the number of beds in the subacute care facility consistent with the allocation made in paragraph 25.118(5) "a."

25.118(6) The department will evaluate the subacute care facility's qualifications based on the following:

a. Comments received within 21 days from the governing boards of the mental health and disability services region in which the subacute care facility will be located;

b. The department of inspections and appeals' determination of the adequacy of the facility and staff;

c. Information contained in the subacute care facility's application that describes the resources and staff needed to provide each of the services as required in 481—subrule 71.3(1), including the following:

(1) The name and résumé of the facility administrator and description of how the administrator meets the qualifications described in 481—subrule 71.10(2);

(2) The names and résumés of the psychiatrist or advanced registered nurse practitioner, registered nurse, mental health professional, and social services staff and a description of how these staff meet the requirements of 481—subrule 71.12(2); and

(3) The description of how the facility will coordinate with human services agencies to identify unnecessary duplication of services and plan for development and coordination of needed services.

d. Information related to adverse findings or founded complaints against the applicant in the provision of any service. The department will make reasonable efforts to obtain this information through a review of the following:

(1) The Iowa Medicaid providers sanction list;

(2) The Office of Inspector General's List of Excluded Individuals and Entities; and

(3) The department of inspections and appeals health facilities division's public reports and final findings of complaint investigations.

25.118(7) All decisions made by the department related to this process are subject to administrative review in accordance with 441—Chapter 7.

These rules are intended to implement Iowa Code section 135G.6.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/3/16.